

REMARKS

The Examiner has:

- I) objected to Claims 8 and 43 as being dependent upon a rejected base claim
- II) rejected Claims 7, 9-10, and 12 under 35 U.S.C. 102(b) as being unpatentable in light of Brakenhoff et al., U.S. Patent No. 5,591,827; and
- III) rejected Claims 7, 9-11, 12-18, 42, and 44-48 under 35 U.S.C. 103(a) as being unpatentable in light of Brakenhoff et al., U.S. Patent No. 5,591,827 and Coleman et al., U.S. Patent No. 5,585,098.
- (IV) rejected Claims 34-41 under 35 U.S.C. 103(a) as being unpatentable in light of Creasey taken with Beutler and Coleman.

Objected to Claims 8 and 43

The Examiner has objected to Claims 8 and 43 as being dependent upon a rejected base claim. However, the Examiner admits that the claims would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claim 8 is solely dependent on claim 7. Claim 43 is solely dependent on claim 42. Thus, in order to overcome the Examiner's objection, previously dependent claims 8 and 43 are incorporated into new claims 49 and 50 respectively. Claim 51 further defines this particular embodiment of the invention.

Rejection under 35 U.S.C 102(b)

The Examiner has rejected Claims 7, 9-10, and 12 under 35 U.S.C. 102(b) as being unpatentable in light of Brakenhoff et al., U.S. Patent No. 5,591,827. We disagree for reasons previously presented. However, in order to further prosecution, without acquiescing to the Examiners rejection, and hereby expressly reserving the right to prosecute the same or similar claims in the future, Claims 7 and 42 have been amended to exclude a cytokine receptor antagonist. Support for the amendment is found at page 2 of the specification (where receptor antagonist is specifically discussed) and in many places in the specification (where only antibodies to cytokines are used).

Rejections under 35 U.S.C 103(a)

1. The Examiner has rejected Claims 7, 9-11, 12-18, 42, and 44-48 under 35 U.S.C. 103(a) as being unpatentable in light of Brakenhoff et al., U.S. Patent No. 5,591,827 and Coleman et al., U.S. Patent No. 5,585,098. We disagree for reasons previously presented. Moreover, in view of the above-described amendments to Claims 7 and 42, the rejection is moot.

2. The Examiner has rejected Claims 34-41 under 35 U.S.C. 103(a) as being unpatentable in light of Creasey taken with Beutler and Coleman. The Examiner argues that "The Creasey reference further teaches that mixtures of antibodies can be used for the treatment of sepsis (page 4, lines 28-31)." (Office Action, page 6). However, when one reads lines 28-31 of page 4, one sees no such broad teaching; rather, Creasey teaches: "a mixture of antibodies for the prophylactic or therapeutic treatment of sepsis **consisting of** IL-6 and M-CSF antibody . . ." (emphasis added). Thus, no other antibody is taught or suggested. The Examiner has misread Creasey. Creasey teaches only a particular combination. Therefore, there is no basis for the Examiner combining Creasey with another reference - since such a combination is not what Creasey intends.

The Examiner is reminded of the empirical nature of the claimed embodiments. The claims do not recite the combination of any two antibodies. Indeed, the specification shows that certain combinations are not effective under the conditions tested.

The Examiner is also reminded of literature references (discussed earlier in this prosecution history) which warn against combination therapy. The Examiner is not free to disregard this information.

In sum, there is no basis for the combination and the rejection must be withdrawn.

CONCLUSION

Applicants believe that the current and previous arguments and the new claim set forth above traverse the Examiner's rejections and objections, therefore, request that these grounds be withdrawn for the reasons set forth above. Should the Examiner believe that a telephone interview would aid in the prosecution of this application, the Applicants encourage the Examiner to call the undersigned collect at 617.984.0616

PATENT

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